



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JAN 24 2012

Robert H. Friebert, Esq.
Matthew W. O'Neill, Esq.
Friebert, Finerty & St. John, S.C.
Two Plaza East, Suite 1250
330 East Kilbourn Avenue
Milwaukee, WI 53202

RE: MUR 6504
William E. Gardner
Wisconsin & Southern Railroad Co.

Dear Mssrs. Friebert and O'Neill:

On January 11, 2012, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 441a(a)(1)(A), 441b and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See *Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and *Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record*, 74 Fed. Reg. 66132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Ana J. Peña-Wallace
Attorney

Enclosure
Conciliation Agreement

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OFFICE OF
FEDERAL ELECTION
COMMISSION

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OFFICE OF GENERAL
COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 6504

William E. Gardner)

Wisconsin & Southern Railroad Co.)

CONCILIATION AGREEMENT

This matter was initiated by a *sua sponte* submission filed with the Federal Election

Commission ("Commission") and pursuant to information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that William E. Gardner violated 2 U.S.C. §§ 441a(a)(1)(A), 441b and 441f and that Wisconsin & Southern Railroad Co. (collectively "Respondents") violated 2 U.S.C. §§ 441b and 441f.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Wisconsin & Southern Railroad Co. ("WSOR") is a corporation with headquarters in Milwaukee, Wisconsin.

2. William E. Gardner is the President and Chief Executive Officer of WSOR.

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3. "Citizens for Tom Petri" was Representative Tom Petri's 2008 and 2010 authorized committee for his campaign for election to the U.S. House of Representatives. "Citizens for Robert Abboud" was Robert Abboud's 2008 authorized committee for his campaign for election to the U.S. House of Representatives. These committees are "political committees" within the meaning of 2 U.S.C. § 431(4).

4. Since 2003, Respondents have engaged in a practice of reimbursing federal and state political contributions using corporate funds and Gardner's personal funds, for contributions made by Gardner, Gardner's daughter, and WSOR employees. The reimbursement practice stemmed primarily from Gardner's goal to fund candidates who supported the railroad industry.

5. On June 8, 2010, Respondents filed a *sua sponte* submission with the Commission concerning federal campaign finance violations totaling \$2,500. The submission disclosed that WSOR reimbursed Timothy Karp, WSOR's Chief Financial Officer, for two contributions of \$500 each that he made to the Citizens for Tom Petri in March 2007 and March 2008, and reimbursed Kenneth Lucht, WSOR's Community Development Manager, for three contributions of \$500 each that he made to the Citizens for Tom Petri in March 2007, March 2008 and March 2010. These contributions were requested by Gardner and reimbursed at Gardner's direction, using WSOR's corporate funds.

6. Respondents filed their *sua sponte* submission after an internal review of WSOR's financial records. That review was conducted after Timothy Karp sought advice from counsel when an employee questioned the propriety of the company's reimbursement practice. After completing the review, Respondents self-reported state campaign finance violations to the

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1 Wisconsin Government Accountability Board ("GAB") and later reported federal violations to
2 the Commission.

3 7. The *sua sponte* submission included copies of travel and expense reports and
4 contribution checks concerning the reimbursements, as well as copies of invitations and RSVPs
5 to Petri fundraisers, e-mails, and other internal documentation. Some of WSOR's internal
6 documentation categorized the reimbursements as "Donation[s]," "Contributi[ons]," and "Petri
7 Dona[tions]." Gardner directed employees to prepare the WSOR reimbursement checks.
8 Following the *sua sponte* submission, Respondents provided the Commission with information
9 supplementing the submission and access to electronically stored information that had been
10 examined by the state investigators. According to the *sua sponte* submission, the reimbursement
11 practice has ceased and Gardner takes "full and complete responsibility" for the misconduct.

12 8. The Commission's review of this matter revealed additional information that
13 Gardner personally reimbursed his daughter for a \$2,300 federal contribution she made to
14 Citizens for Robert Abboud on October 11, 2008, after Gardner had already contributed \$1,000
15 to the same committee earlier the same month.

16 9. On April 19, 2010, the GAB received a complaint concerning Gardner's
17 reimbursement of political contributions. On May 10, 2010, GAB and the Milwaukee County
18 District Attorney's Office formally commenced a joint investigation of Gardner's and WSOR's
19 reimbursement of contributions to state political campaigns. The state investigation found that
20 Respondents reimbursed over \$70,000 in state political contributions from 2005 through 2010.
21 Following that investigation, WSOR agreed to pay a civil forfeiture of \$166,900 in connection
22 with the state violations. Gardner pled guilty to two criminal felony counts of making excessive
23 contributions and making contributions in the names of others, in violation of Wis. Stats.

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1 §§ 11.24(1), 11.26(1), 11.61(1)(a) and (b), and 939.05, involving over \$70,000 in state
2 contributions that Gardner personally reimbursed or reimbursed using WSOR funds. On July 7,
3 2011, Gardner was sentenced to a 30-month concurrent prison sentence on both counts,
4 comprised of 15 months imprisonment and 15 months of extended supervision (*i.e.*, parole),
5 which was stayed while he complies with 24 months of probation supervision. As a condition of
6 probation, Gardner must serve 100 hours of community service.

7 10. The Federal Election Campaign Act of 1971, as amended ("the Act") provides
8 that no person shall make a contribution in the name of another person. 2 U.S.C. § 441f. The
9 Commission's regulations further prohibit knowingly helping or assisting any person in making
10 a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

11 11. During the 2008 and 2010 election cycles, the Act limited the amount a person
12 could contribute to any candidate for federal office and his or her authorized political committees
13 to \$2,300 and \$2,400, respectively, per election. 2 U.S.C. § 441a(a)(1)(A).

14 12. The Act prohibits corporations from making any contributions in connection with
15 a federal election and prohibits corporate officers from consenting to such contributions.
16 2 U.S.C. § 441b(a).

17 V. 1. Respondent Wisconsin & Southern Railroad Co. violated 2 U.S.C. §§ 441b and
18 441f by making \$2,500 in contributions in the names of others using its corporate funds.

19 2. Respondent William E. Gardner violated 2 U.S.C. §§ 441b and 441f by consenting
20 to the making of \$2,500 in corporate contributions and knowingly assisting in the making of
21 contributions in the names of others.

22 3. Respondent William E. Gardner violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f by
23 making an excessive contribution in the name of his daughter.

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VI. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eight Thousand Five Hundred Dollars (\$8,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent Wisconsin & Southern Railroad Co. will cease and desist from violating 2 U.S.C. §§ 441b and 441f.

3. Respondent William E. Gardner will cease and desist from violating 2 U.S.C. §§ 441a(a)(1)(A), 441b and 441f.

4. Respondents waive any rights to a refund of the impermissible contributions.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Anthony Herman
General Counsel

BY:

Kathleen Guith

Kathleen Guith
Acting Associate General Counsel
for Enforcement

1/24/12

Date

FOR THE RESPONDENTS:

Robert H. Friebert
(Name)
(Position) *Counsel for Respondents*

12/12/11

Date

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